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NURSERYMEN AND QUARANTINES

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The opportunity given to me by your president to talk to the American Association of Nurserymen is greatly appreciated. The nurserymen of America are as intimately associated with the affairs of the Bureau of Entomology and Plant Quarantine and as vitally concerned with its activities, accomplishments and mistakes as is any group of agriculturists in the country.

During the past few years while the giving of work to unemployed and needy has been of the utmost importance, the Bureau of Entomology and Plant Quarantine has wherever possible made use of emergency funds to further the work of pest eradication and control. Since 1933, when the first emergency funds became available, until July 1, 1937, we have used $37,526,392 for such work and we have employed as many as 27,725 men at the peak, the average being 16,000. For the first six months of the current fiscal year an additional $4,660,564 of emergency relief funds has been provided. We have been able to step ahead by years the control and eradication of barberry, white pine blister rust, citrus canker, phony peach, Dutch elm disease, pink bollworm, gypsy moth, and other features of control and eradication work.

One of the really important jobs under way at this time is the eradication of the Dutch elm disease which was first found in this country in 1930. Since that time in the inspection from the ground and by autogiro of millions of elm trees in the United States, there have been found to June 26, 1937, 22,898 trees in which the disease was confirmed. Of this number only 86 were found outside the main infected area in the vicinity of New York; namely, 33 at Cleveland, Ohio, 33 at Indianapolis, Ind., 1 at Cincinnati, Ohio, 1 at Cumberland, Md., 3 at Brunswick, Md., 2 at Baltimore, Md., 4 at Norfolk, Va., 1 at Portsmouth, Va., 1 at Guilford, Conn., 1 at Branford, Conn., and 6 at Old Lyme, Conn. In eliminating dead or dying trees in order to prevent building up of infestation by the beetle which carries the disease, 3,323,339 elm trees in a dead or dying condition from one cause or another have been removed. In this work up to June 30, 1937, $8,336,875 of emergency money and $672,312 regular money has been expended. For the first six months of the present fiscal year, an additional $1,724,040 of emergency relief funds has been provided, and $460,860 of regular funds has been appropriated for the current fiscal year. If permitted to continue in this work on the scale which its importance justifies, it is believed there is every reason to look forward to complete extermination of the disease in this country. Definite progress has been made and all the information we are able to obtain in this country and abroad indicates that the program we are pursuing is the only one which promises to be successful and it does promise to be successful.

Of importance to the nurserymen everywhere is the Japanese beetle situation, and

during the past season building up of infestation outside the quarantine area was not sufficiently important to warrant the extension in any marked degree of the quarantine area. Inevitably, unless something comes into the picture which we are not aware of, the Japanese beetle will ultimately spread to all those parts of the United States where it would find suitable environment. The job of enforcing the quarantine on account of the Japanese beetle is becoming more and more difficult and more and more complicated with an increasing number of people and industries affected. It is believed there is still justification for maintaining a Federal quarantine but sooner or later it would seem that the point would be reached where, by reason of large area or number of separate infestations, the Federal quarantine would no longer be warranted. This and other conditions having a bearing on the interstate movement of plant products bring forcibly to our attention the need and importance of bringing about a standardization and uniformity in inspection methods and quarantine activities of the states and of the Federal Government. That plant quarantines are necessary as a protection to uninfested and uninfected areas against major plant pests which are not established therein is generally recognized. The fact that quarantine action has been taken presupposes that a dangerous plant disease or insect pest is involved, the spread of which should be prevented; however, the effectiveness of such quarantines depends on both enforcement and compliance. Enforcement rests with the officials while compliance is a function of the person moving the plants. In the enforcement of Federal quarantines we have assisted by supplementing the inspection forces in the control areas with transit inspection maintained at the more important transfer terminals for the purpose of intercepting shipments moving by freight, express and mail in violation of quarantines. States also have at their disposal means for enforcing state quarantines although they are usually somewhat limited. In a number of states enforcement of quarantines is entirely inadequate due to lack of man power and other facilities. The effectiveness of quarantines in preventing the spread of dangerous plant pests under such conditions must depend pretty largely if not entirely on the compliance of the shippers and common carriers. As a whole, such people appreciate the value of pest control and are anxious to comply with quarantines but in many instances are not able to fully comply because of the numerous state quarantines now in existence which are complicated and involved as to procedure and subject matter covered in such quarantines. Do you know that there are now in existence over 200 separate and distinct state plant quarantines covering 52 plant pests? These include 32 state quarantines covering the subject of corn borer alone no two of which are alike. The alfalfa weevil is the subject of 25 state quarantines all varying either as to infested area, commodities covered, or as to treatment of such commodities as a prerequisite of shipment. Similar conditions apply all the way down the line in practically every instance where more than one state has a quarantine against the same pest. There would seem to be no logical reason why 52 plant pests now the subject of more than 200 state quarantines could not be covered by 52 uniform quarantines, or why the 32 quarantines now applying to corn borer could not be reduced to one quarantine, or the 25 now enforced against the alfalfa weevil could not be reduced to one. If this can not be done or if it is not done, what is going to be the situation with respect to the Japanese beetle quarantine if and when the Federal quarantine is given up? Standardization of inspection work and state quarantines can be accomplished and I am pleased to be able to say that the state quarantine officers through their regional plant boards and through the National Plant Board in cooperation with the Bureau of Entomology and Plant Quarantine, or perhaps I should say assisted by the Bureau, are making progress in that direction. More progress is needed and I am sure it will come. The Bureau is now undertaking a careful review of each and every Federal quarantine in an attempt to simplify and clarify the wording and make more effective and more simple the working of each quarantine.

You have been familiar for several years with the work that has been done on the phony disease of peaches in the South. A newly discovered disease--peach mosaic--found for the first time at Brownwood, Tex., during 1931, has since been found in the States of Colorado, Utah, Arizona, New Mexico, Oklahoma and California. It seems to be an extremely serious virus disease which may be artificially transmitted by budwood or peach bark grafts from either twig or root bark; hence, the most probable means of long distance spread is through the medium of infected host plants or budding wood. The natural spread seems to be rapid and apparently occurs in colony formation. Eradication of this disease is looked upon as practicable if we may depend on evidence gained as a result of the work in Colorado and Utah, the only states where the eradication work has been energetically carried on a sufficient length of time to make accurate observations possible. The program on this disease and on the phony peach disease is carried on in cooperation with the states concerned and since August 1935, to date, 185,000 orchard trees, more than 6,500,000 abandoned orchard trees and more than 55,000,000 escaped peach trees have been destroyed. Much more of this type of work could well be done in the interest of pest control in this country.

At the convention of this Association in Chicago on July 20, 1933, I delivered an address to which I gave the rather imposing title of "The Past, Present and Future of Quarantine 37." I pointed out what I thought were the bad features of the procedure we were following in enforcing the provisions of Quarantine 37, and while I did not indulge to any marked degree in crystal gazing in discussing the future of Quarantine 37, my limited entry into this field met with about the same success that most such efforts meet with. Following the delivery of this address a public conference was called in Washington on October 25, 1933 to reexamine the underlying principles involved in the interpretation and enforcement of Quarantine 37. It was specifically proposed to consider the elimination of consideration of the availability of plants in this country; limitation to be placed on the number of plants which may be imported by reason of facilities, or lack of the same, for adequate inspection; value of considering horticultural qualifications of applicants in the issuance of permits; desirability of continuing to hold certain plants for two or more years before release; the advisability of providing for the inspection of imported plants at New York and certain other ports of entry rather than shipping them to Washington as at present, and such other pertinent items as might be brought up. At this conference, as is usual with such conferences and public hearings, the sentiment of those in attendance was pretty largely moulded in advance of the conference by what might be termed paid representatives of special groups, and the fundamental principles of the quarantine were either discussed very superficially or not touched on at all. Aside from the comparatively few people who are interested commercially in the effects of the quarantine, those large masses of people who are affected in a small way individually but in a large way collectively, are seldom if ever represented at these conferences and public hearings and their real opinion is not therefore brought into public view. That was true of the conference held in October 1933.

It has been frequently noted that, in the words of the Federal Horticultural Board, Quarantine 37 voiced the policy of practical exclusion of plants if pests were to be excluded and thus necessarily of a given plant when that plant was known to be available in the United States. For the first few years following the promulgation of Quarantine 37, no attempt was made to establish definite quantity limits of imports. The volume of imports was controlled to some extent by selecting permittees and by refusing permits for

what were believed to be available varieties. The public became more acquainted with the procedure for importing as time passed and consequently as the work grew, the need for quantity limits became apparent if the quarantine were to accomplish its announced purpose. Some rather liberal quantity limits were established during the fiscal year 1925 and these were somewhat reduced for the fiscal year 1926. No limits were placed on narcissus bulbs until the second year of importation under special permit. All the early limits applied to the varieties or in some cases, species, and importations were made cumulative in the fiscal year 1927, except for narcissus. Thus when an importer had entered the limit of a variety he would be refused permits for further importations of that variety. Narcissus limits were made cumulative in the fiscal year 1929. In the fiscal year 1930 the narcissus quantity limit was placed on a generic basis and the previous cumulative principle was abandoned for that genus. The same step was taken beginning with the fiscal year 1931 for all other genera. Between the fiscal years 1925 and 1931 there was a gradual lowering of quantity limits.

In establishing the quantity limits on a generic basis, the old bases, which differed for the amateur and commercial grower and as to the origin of material, were discarded and one set of limits was made to apply to all without regard to the origin of the material. While as noted although there had been a general and gradual reduction in limits from those first established in 1925 to the ones which became effective on July 1, 1930, it may be said that to a great extent the importers themselves set the new limits of July 1930. As a basis for formulating these new limits, analyses were made of the importations of genera principally imported and it was found that, broadly speaking, 100 plants of a genus of tree or shrub, 100 to 500 plants of a genus of herbaceous perennials, and 1,000 to 50,000 of a genus of bulbous and other root-crop genera would amply meet the needs of the importers as shown by actual records of their importations when limits were more liberal. Therefore, while the new limits appeared to involve drastic reductions, actually they fitted nicely with the importing habits of the public at that time. Habits of course formed as a result of the procedure followed in picking and choosing the few who should be given the privilege of monopoly in production of those varieties of plants embargoed and discouraging the thousands of individuals who would have liked and who merited the same privilege. Some consideration was given to the ease with which a kind of plant could be reproduced, its susceptibility to unfavorable transit conditions, the popular demand for it, but in view of the general restrictions effective by these limits, the question of pest risk—the real fundamental factor in question—was not considered in setting the limit on any one genus. Protests as to certain limitations were received and the limits were reviewed and in some instances revised with liberalizations, effective July 17, 1931.

When the limit of 100 plants was established for chrysanthemums and a limit of 250 was set for carnations, it did not mean that chrysanthemums involved any greater pest risk than carnations. The decision was made more on the basis of the relative ease of propagating the chrysanthemum. The placing of a limit of 500 for azaleas and rhododendrons, with a comparable limit of 100 for conifers, was based more on relative demand. Likewise, demand and purported horticultural difficulties influenced the placing of 50,000 for the limit of Iris bulbs, while a limit of only 1,000 was established for oxalis.

When the limit was raised on July 17, 1931, from 1,000 to 5,000 for gladiolus and tuberous begonias and was not raised for gloxinias, the question of demand, not pest risk, entered into the picture. The fact that the limit on gloxinia was not likewise raised was due only and entirely to the lack of evidence that a need for greater liberality existed

in the gloxinia limit. Some limits, as for example the one on delphinium, were raised largely because of the heavy losses from storage rots, heating, and other unfavorable transit conditions.

So much for the history of quantity limits. Their original purpose was in line with the announced purpose of Quarantine 37 namely, the ultimate exclusion of all stock not absolutely essential to the horticultural needs of the country. More recently they have been looked upon as justified only as a means for reducing the total volume of imports to that which could be adequately inspected by the personnel, and with the facilities available. They no longer serve even this purpose.

Early in the administration of the quarantine it was apparent that one importer might have good reason for wishing to place his importations in the care of another, where better propagating facilities, more favorable climatic conditions, etc., were available. A contract form signed by the importer and his agent and filed with the Department gained the sanction of the Department for such an arrangement. Doubtless there may have been an occasional effort to use this contractual arrangement as means of defeating the quantity limitations but certainly the practice was not general. Today the practice would seem to be in general use whenever the limits prevent one from importing the desired number of plants. It is known that certain firms have subsidiaries and, when the question of quantity limits is raised with the parent firm, the subsidiaries apply for and receive permits. Members of an importer's family, his employees, possibly his neighbors and friends, now apply in their own names, submitting contract forms with their applications. As an extreme illustration, which after all is extreme only in degree, I mention a firm which, in addition to importing the limit of a bulbous genus, contracted to grow, or allowed to be grown on its premises, the like importations of 27 other permittees. It is open to suspicion that one importer thus actually imported 28 times the quantity limit. Many other illustrations involving only fewer importations but accomplishing the same purpose of beating the quarantine, can be found in an examination of our files. Amateurs as well as commercial interests are involved because under our American system of Government one person is entitled as much as another to equal rights and privileges. It is obviously not within our province to attempt to say who shall import, as long as the importer agrees to utilize his imports for one of the purposes authorized under the quarantine. However, it is within our province to say and we do say here and now that amateurs and individuals are entitled to and will receive the same consideration in the granting of permits as firms and corporations.

Since last appearing before you studies have been made of our means of determining the new varieties and necessary propagating stock, and the results achieved. According to our annual reports, at the close of the fiscal year 1922, 11,344 varieties of plants had been listed on special permit application forms. 89.1% of these were approved for entry. By the close of the fiscal year 1933, 96.2% of the 62,570 varieties for which permits had been requested were approved for importation. In other words, while the net number of approved varieties had increased in those eleven years to nearly six times their number as of June 30, 1922, the net number of rejected varieties was less than two times the 1922 figure. On the other hand, hundreds of these approved varieties had not been listed on permit applications for many years. The trade had, in effect, "rejected" them as changing conditions, different architectural designs, new dress styles requiring flowers of various colors and types, and other shifting demands had brought about the need for the different, the newer, and often the better varieties. A review of the existing rejections, the majority of which had not been questioned by reason of later requests to import the

varieties involved, showed that many so-called "rejected" varieties should be approved for entry. No new rejections were made and gradually we discontinued entirely, except for narcissus, the effort to designate varieties approved for entry. Insofar as varieties listed on applications for permit are concerned, the applications are now and will continue to be approved or disapproved solely on the basis of pest risk, in accord with the intent of the Plant Quarantine Act. This policy has been in effect for some time.

In selecting those applicants who should be approved to receive permits to import it was formerly necessary, in order to determine an applicant's horticultural qualifications, for him to show that he was an experienced grower of the type of plant desired and had ample facilities for the propagation of the proposed imports. Under this system there was little opportunity for the amateur to import, most importations being made by the larger commercial growers. Amateurs were approved on the basis of specializing in a genus, opening their estates to the public, and exhibiting at the larger horticultural shows. Hybridizers were handled on the same basis as amateurs, except that they were permitted, in the early days, to sell increase in the same manner as the commercial propagators. Beginning in 1926 there was a tendency toward greater liberality in establishing status, which culminated in the decision reached in this Bureau in 1934 to discontinue this phase of our procedure. It is questionable whether this Department had a right under the Plant Quarantine Act to say who is and who is not eligible to receive permits.

The wording of the regulations supplemental to Quarantine No. 37 explicitly states that certain importations are to be made for certain purposes which are in line with the original objective of the quarantine. I question whether they are in line with the wording of the Act under which the quarantine was written. Nevertheless the question of ultimate utilization of imports under special permit has always been intertwined with the procedure for administering that quarantine. With the discontinuance of the question of the applicant's horticultural qualifications to import, certain relaxations in the attitude toward utilization were obviously necessary. The quarantine makes no provision for entry under regulation 14 for immediate resale but almost any other proposed utilization could be, and is, construed as falling under the heading of one of the approved purposes. Consequently, insofar as utilization is concerned, no applications for special permits are denied except when it is known that immediate resale is contemplated. This liberalization brings the administration of the quarantine more nearly perhaps but not entirely into legal relation with the Act.

The Plant Quarantine Act does not provide for any procedure whereby an importation once released at the port of entry must be grown under approved horticultural conditions for any period to give the Department opportunity for further inspections to determine apparent freedom from pests. Consequently field inspections of special permit importations have been discontinued. I am not prepared to say, however, that in all cases there should be no follow-up field inspections but I repeat what I said in 1933—that inspection methods have improved, knowledge of conditions has been added to, and more reliance can now be placed in inspection at the time of entry than was the case in 1919 when the quarantine was promulgated. Importers are still required to sign the agreement to hold their imports for a period of at least two years.

I have attempted to detail the principal features that have been found to be out of harmony with the legal provisions of the Plant Quarantine Act, with present needs of the country and with sound quarantine practice. Most of those features ignore or disregard entirely the pest risk which should be the real basis of the quarantine.

Let us now turn for the moment to the quarantine itself to see what is necessary to bring it in harmony with the Act.

In brief, Section 1 of the Plant Quarantine Act requires that nursery stock imported or offered for entry must be imported under permit issued under such conditions as the Secretary of Agriculture may prescribe, in addition to those laid down in the Act. Each shipment must be accompanied by a certificate of the proper official of the country from which the importation is made to the effect that it has been inspected and is believed to be free of pests. When the conditions prescribed by the Secretary of Agriculture have been met, it is mandatory for him to issue a permit for the importation. It is provided that the Secretary may prescribe regulations to govern the entry of nursery stock from countries not maintaining official systems of inspection. Importations by the Department of Agriculture may be made for experimental or scientific purposes under such regulations as may be prescribed by the Secretary of Agriculture. Please note that this section only provides for the Secretary to make conditions of entry. He may require that importations shall be free of pests and it is within his province to cause inspection to be made to determine compliance with this requirement. He may require that entry be made at specific ports in order that such inspection may be made.

The procedure we have followed has been subjected to careful analysis and compared in detail with the language of the Plant Quarantine Act and after mature consideration it is believed that specific authority does not exist for limiting the quantity of nursery stock that may be imported from countries with inspection systems or for designating a given person as one qualified to receive importations or for prescribing the purpose for which a given importation shall be used or for exacting an agreement that the importation shall be grown under Departmental observation for a given length of time.

Section 2 of the Act requires that a notice shall be given upon arrival of a shipment of nursery stock at the port of entry and that before such stock is removed from the port of entry a notice of shipment shall also be given. No interstate shipment of an importation of nursery stock may be made until either such notice has been given or the stock has been inspected by a State official. Please note that the notice of shipment is to be given before the removal of the importation from the port of entry. This notice is not the condition of entry which a regulation promulgated by the Federal Horticultural Board (HB-134, March 23, 1921) has attempted to make it. Please also note that, for interstate shipments, a notice of shipment or State inspection is required. Once that notice is given, or as soon as the shipment has received State inspection, further interstate movement is subject only to such restrictions as may apply to interstate movement of like domestic material, except in the matter of marking. Subsequent notices are not required by the Act as they are by Quarantine 37.

Section 3 requires that importations of nursery stock are to be marked in a specified manner.

Section 4 requires that importations of nursery stock moving interstate shall be marked in the manner specified unless and until inspected by a State official.

The term "nursery stock", as used in these sections, is defined in Section 6 to include "all field-grown florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation." Field, vegetable, and flower seeds, bedding plants and other herbaceous plants, bulbs, and roots, are not defined as nursery stock

and therefore were not originally subject to the restrictions of entry contained in Sections 1 to 4 of the Act.

Section 5 provides that whenever the Secretary of Agriculture shall determine that the unrestricted importation of any plant or plant product not defined by the Act as nursery stock may result in the entry of injurious pests, he shall call a public hearing and then promulgate his determination, specifying the class of plants or plant products to be restricted and the country or countries where they are grown. Thereafter, or until such promulgation is withdrawn, these materials are enterable only under the conditions laid down in Sections 1 to 4, which I have just discussed.

These 5 sections, with the definition of nursery stock in Section 6, comprise that part of the Plant Quarantine Act which deals with the restrictions on importations.

Section 7 provides means whereby, after due public hearing, the Secretary of Agriculture may cause the exclusion of a plant or plant product to prevent the introduction of a pest. His determination of such necessity, in the form of a quarantine notice, makes it unlawful to import the plant or plant product for any purpose whatever except by the Department of Agriculture for experimental or scientific purposes. The power of exclusion is in this section of the Act itself. The Secretary's action in promulgating a notice of quarantine merely makes the Act operative with respect to the plant or plant product in question. No provision exists in this section for restricted entry.

With this provision of the Act in mind let us look to Quarantine 37 and our method of administering it. At this point it should be stated parenthetically that the classes of plant materials now restricted by that quarantine which are not defined as nursery stock in Section 6 of the Act, were brought under the provisions of Sections 1 to 4 of the Act by due process, in accordance with the procedure outlined in Section 5. I need say nothing further as to the legal aspects of quantity limits, availability, horticultural qualifications to import, utilization, or delayed release, that is, growing imports under agreement for a period. Nevertheless, Quarantine 37 contains reference to quantity limits and purpose in regulations 1, 3, 4, and 14. Availability is touched upon in regulations 1 and 14. Three definite prohibitions such as should be written in accordance with Section 7 of the Act, are to be found in regulation 3. These prohibitions are not written into the quarantine itself but are parts of a supplemental regulation. Prohibitions on certain materials have been administered during the past several years under Regulations 3, 14, and 15 of Quarantine 37. It is believed these prohibitions should be the subject of prohibitory quarantines under the Plant Quarantine Act or the prohibitions should be dropped.

The foregoing instances indicate that Quarantine 37 should be examined openly in the light of the provisions of the law under which it was promulgated. As previously shown, many steps have already been taken in an effort to bring our administration of this quarantine more nearly into accord with the law. It is admitted these steps are not strictly in accordance with the purpose announced when the quarantine was promulgated or with the policies followed in the early years of the administration of that quarantine. The question to be faced squarely is - shall we modify our policies and procedures, and Quarantine 37 to fit the Act, or shall the Act be modified to fit the policies expressed in and by Quarantine 37? The former step is in our power to take, but the latter is for the Congress to consider. It is my opinion that action in both directions is needed. For

example, it would seem proper that we should have legal authority in certain instances to require propagation of imported stock under safeguards until the pest status of the importation has been determined sufficiently to decide whether the risk of introducing pests actually exists. With some shipments it is impossible to make this determination at the time of entry because the immature stages of development of some organisms present are impossible of diagnosis.

Many American growers have built their businesses on the trade protection afforded by the policies followed in administering Quarantine 37. In justice to them the Department has issued repeated statements pointing out that the Plant Quarantine Act and quarantines promulgated thereunder should be administered for the sole purpose of preventing the entry into this country and the spread within the United States of injurious plant pests. These statements have been a warning to growers to adjust their businesses away from the false basis of the trade protection given them by the administrative procedure we have been discussing.

Quarantines are and should be for the purpose of preventing the entry and movement of pests and for facilitating the entry and movement of products. Quarantine 37 has been used more for the purpose of preventing the entry and movement of products and for creating monopolies in the production of certain fancied varieties of plants. At numerous public hearings and conferences held on this quarantine in Washington the evidence has forced one to conclude that the greater interest was in trade protection than in pest protection. We have witnessed not so long ago the spectacle of a certain group urging the continued admission of a large class of products infested by a certain pest on the theory that it had not been proven that this pest would transfer to other commodities. The exclusion was demanded by the same group of another product carrying a pest which can not be distinguished microscopically from the one infesting the products the entry of which that group demanded. Changes in the quarantine have been made, changes are being made, and changes will continue to be made until finally in spite of the obstacles thrown in the way, the quarantine will be placed on the basis which has for its purpose the prevention of pest movement and not the prevention of plant movement.

In conclusion, I wish to emphasize again the need for more adequate inspection facilities at New York and certain other ports of entry. The examination of plant imports in modern inspection houses in New York and other ports of entry would not only afford greater protection to the country, but would obviate the necessity of shipping plants to Washington, frequently under adverse conditions, not to mention the cost in time and money.